

Environmental Protection Agency

§ 35.6500

EPA's interest in the current fair market value of the supplies, less any reasonable selling expenses.

(2) If the supplies remaining at the end of the project period have an aggregate fair market value of less than \$5,000, the recipient may keep the supplies to use on another CERCLA project. If the recipient cannot use the supplies on another CERCLA project, then the recipient may keep or sell the supplies without reimbursing the Hazardous Substance Superfund.

§ 35.6345 Equipment disposal options.

The following disposal options are available:

(a) Use the equipment on another CERCLA project and reimburse the original project for the fair market value of the equipment;

(b) If both the recipient and EPA concur, keep the equipment and reimburse the Hazardous Substance Superfund, for EPA's interest in the current fair market value of the equipment;

(c) Sell the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment, less any reasonable selling expenses; or

(d) Return the equipment to EPA and, if applicable, EPA will reimburse the recipient for the recipient's proportionate share in the current fair market value of the equipment.

§ 35.6350 Disposal of federally owned property.

When federally owned property is no longer needed, or at the end of the project, the recipient must inform EPA that the property is available for return to the Federal Government. EPA will send disposition instructions to the recipient.

REAL PROPERTY REQUIREMENTS UNDER A COOPERATIVE AGREEMENT

§ 35.6400 Acquisition and transfer of interest.

(a) An interest in real property may be acquired only with prior approval of EPA.

(1) If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the

property must agree to hold the necessary property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real estate to permit conduct of a remedial action, the acquisition may be made only if the State, or Indian Tribe to the extent of its legal authority, provides assurance that it will accept transfer of the acquired interest in accordance with 40 CFR 300.510(f). States and Indian Tribes must follow the requirements in §§ 35.6105(b)(5) and 35.6110(b)(2) respectively, of this subpart.

(b) The recipient must comply with applicable Federal regulations for real property acquisition under assistance agreements contained in part 4 of this chapter, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs."

[55 FR 23007, June 5, 1990, as amended at 59 FR 35854, July 14, 1994]

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 40 CFR 31.31.

COPYRIGHT REQUIREMENTS UNDER A COOPERATIVE AGREEMENT

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 40 CFR 31.34. The recipient must comply with the requirements regarding contract copyright provisions described in § 35.6595(b)(3) of this subpart.

USE OF RECIPIENT EMPLOYEES ("FORCE ACCOUNT") UNDER A COOPERATIVE AGREEMENT

§ 35.6500 General requirements.

(a) Force Account work is the use of the recipient's own employees or equipment for construction, construction-related activities (including architecture and engineering services), or repair or improvement to a facility. When using Force Account work, the recipient must demonstrate that the employees can complete the work as competently

as, and more economically than, contractors, or that an emergency necessitates the use of the Force Account.

(b) Where the value of Force Account services exceeds \$25,000, the recipient must receive written authorization for use from the award official.

PROCUREMENT REQUIREMENTS UNDER A
COOPERATIVE AGREEMENT

§ 35.6550 Procurement system standards.

(a) *Recipient standards*—(1) *Procurement system evaluation.* (i) An applicant or recipient must evaluate its own procurement system to determine if the system meets the intent of the requirements of this subpart. After evaluating its procurement system, the applicant or recipient must complete the “Procurement System Certification” (EPA Form 5700–48) and submit the form to EPA with its application.

(ii) The certification will be valid for two years or for the length of the project period specified in the Cooperative Agreement, whichever is greater, unless the recipient substantially revises its procurement system or the award official determines that the recipient is not following the intent of the requirements in this part. (See subparagraph (a)(4) of this section regarding EPA right to review.) If the recipient substantially revises its procurement system, the recipient must re-evaluate its system and submit a revised EPA Form 5700–48.

(2) *Certified procurement system.* Even if the applicant or recipient has certified that its procurement system meets the intent of the requirements of this subpart, the EPA award official retains the authority as stated in:

(i) Section 35.6565(d)(1)(iii), “Non-competitive proposals,” regarding award official authorization of non-competitive proposals;

(ii) Section 35.6565(b), “Sealed bids (formal advertising),” regarding award official approval for the use of a procurement method other than sealed bidding for a remedial action award contract, except for Architectural/Engineering services and post-removal site control;

(iii) Section 35.6550(a)(9), “Protests,” regarding EPA review of protests; and

(iv) 40 CFR 31.36(g)(2)(iv), “Awarding Agency Review,” regarding the review of proposed awards over \$25,000 which are to be awarded to other than the apparent low bidder under a sealed bid procurement.

(3) *Noncertified procurement system.* If the applicant or recipient has not certified that its procurement system meets the intent of the requirements of this subpart, then the recipient must follow the requirements of this subpart and allow EPA preaward review of proposed procurement actions that will use EPA funds. In addition, the recipient’s contractors and subcontractors must submit their cost or price data on EPA Form 5700–41, “Cost or Price Summary Format for Subagreements Under U.S. EPA Grants,” or in another format which provides information similar to that required by EPA Form 5700–41. This specific requirement is an addition to the requirements regarding cost and price analysis described in § 35.6585 of this subpart.

(4) *EPA review.* EPA reserves the right to review any recipient’s procurement system or procurement action under a Cooperative Agreement.

(5) *Code of conduct.* The recipient must comply with the requirements of 40 CFR 31.36(b)(3), which describes standards of conduct for employees, officers, and agents of the recipient.

(6) *Completion of contractual and administrative issues.* (i) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgement and good administrative practice of all contractual and administrative issues arising out of procurements under the Cooperative Agreement.

(ii) EPA will not substitute its judgement for that of the recipient unless the matter is primarily a Federal concern.

(iii) Violations of law will be referred to the local, State, Tribal, or Federal authority having proper jurisdiction.

(7) *Selection procedures.* The recipient must have written selection procedures for procurement transactions.

(i) EPA may not participate in a recipient’s selection panel except to provide technical assistance. EPA staff providing such technical assistance: